On the Frontline: Effective Handling of ULP and REP Cases Before the FLRA

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Our Goals for Today

How a Regional Director decides ULP and REP cases

What a party representative needs to know to effective handle a ULP or REP case

Discussion of best practices when before the FLRA

Unfair Labor Practice Charges

 Alleged violation of Section 7116(a) or (b) of Federal Service Labor-Management Relations Statute

Know the Statute

Statutory vs. Contractual rights

Requirement of Investigation

 Section 7118(a)(1) of the Statute: "If any agency or labor organization is charged with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge...".

Purpose of ULP Investigation

 To obtain the relevant facts and apply the controlling law in order to determine whether the charge has merit.

Regional Office Investigation

- Impartial and neutral.
- Obtain all relevant evidence necessary to decide the merits of the charge.
- All parties are afforded a reasonable opportunity to present their evidence and views to the Regional Director.
- Witnesses are entitled to official time when interviewed by the Region.

HIGH QUALITY INVESTIGATIONS

- The best possible evidence is obtained.
- Charges are investigated and resolved in a timely and effective manner.
- All participants in the process are treated fairly and professionally and the Region's investigative methods are explained to the participants.

Cooperation

• 5 C.F.R. 2423.8(b): All parties are expected to cooperate during the investigation.

 Cooperation includes making relevant witnesses available to provide testimony, producing relevant documents and providing position statements.

Why Cooperate?

• Is it in the interest of a charged party to cooperate with the FLRA during a ULP investigation?

What are the benefits of cooperation?

Is there a downside to cooperation?

AGENDA

 RD, RA, and Agent meet for the purpose of reviewing facts and deciding the case

Final decision in the case is made by RD

- Agenda results in one of three outcomes
 - Further investigation
 - Dismiss, absent withdrawal
 - Complaint, absent settlement

Purpose of ULP Remedies

- Attempt to recreate the pre-ULP conditions.
- Avoid future unfair labor practices.
- Make whole employees who were adversely affected by the ULP.
- Remedial, not punitive in nature.
- Effectuate the purposes of the Statute.

Type of Settlements

 FLRA Settlement Agreement: Provisions are subject to the approval of the RD and compliance is monitored by the Regional Office.

 Party Settlement Agreement: Provisions agreed to by the parties. Results in withdrawal of the charge.
 Compliance is not monitored by the Region.

Key Concepts for ULP cases Procedural

• 6-month Statute of Limitations. IRS, 61 FLRA 146.

• 7116(d) grievance bar. McChord AFB, 63 FLRA 677.

7116(d) statutory appeal bar. SBA, 51 FLRA 413.

Key Concepts for ULP cases Substantive

- Interference. Frenchburg Job Corps, 49 FLRA 1020.
- Discrimination. *Letterkenny*, 35 FLRA 113.
- Flagrant misconduct. *Defense Mapping*, 17 FLRA 71.
- De minimis. OHA Charleston, 59 FLRA 646.
- Covered by. Customs Miami, 56 FLRA 809.
- Contract defense. IRS, 47 FLRA 1091.
- Necessary information. IRS Kansas City, 50 FLRA 661.
- Scope of bargaining. OPM, 51 FLRA 491.

Representation Petitions

 Know the procedures and what is expected from the agency

Not an adversarial proceeding

Know key representation concepts and get the facts

Representation Unit Issues

Elections

Status of units and employees following a reorganization

Representation Unit Issues Key Concepts

- Appropriate unit. FISC, 52 FLRA 952.
- Successorship. Fleet & Family, 64 FLRA 782.
- Accretion. Grand Coulee, 62 FLRA 522.
- Primacy of official unit descriptions. Randolph
 AFB, 64 FLRA 656 & Fort Dix, 53 FLRA 287.

Representation Status Issues

 Whether a position is excluded from the bargaining unit.

Statutory exclusions.

Scope of unit.

Representation Status Issues Key Concepts

- Manager. Navy ADP, 7 FLRA 172.
- Supervisor. SSA, 60 FLRA 590.
- Confidential. NASA, 57 FLRA 571.
- Personnel work. CPOC, RI, 59 FLRA 296.
- National security. Davis-Monthan AFB, 62 FLRA 332.

Representation processing

Investigation

Stipulation

Hearing

Best Practices for ULP and REP

- Be engaged and prepared
- Know the issues
- Investigate the facts
- Know the legal elements and requirements
- Support factual assertions
- Test assumptions
- Ask questions

For Further Information

www.flra.gov

Statute, Regulations, Decisions, OGC Case Law Guide and Manuals, Contact numbers.

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